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Attorneys for Defendant R.J. Reynolds Tobacco Company

JANET KLEIN and KEN KLEIN, her husband,

Plaintiffs,

vs.

THE AMERICAN TOBACCO COMPANY, INC.;  
AMERICAN BRANDS, INC.; R.J. REYNOLDS  
TOBACCO COMPANY; RJR NABISCO, INC.;  
BROWN & WILLIAMSON TOBACCO  
CORPORATION; BATUS, INC.; BATUS  
HOLDINGS, INC.; PHILIP MORRIS, INC.; PHILIP  
MORRIS COMPANIES, INC. LIGGETT & MYERS,  
INC.; LIGGETT GROUP INC.; BROOKE GROUP,  
LTD.; LORILLARD TOBACCO COMPANY, INC.;  
LORILLARD, INC.; LOWES CORPORATION;  
UNITED STATES TOBACCO COMPANY, UST,  
INC., TOBACCO INSTITUTE, INC. JOHN DOE (I-  
X), JANE DOE (I-X); ABC PARTNERSHIPS (I-X);  
AND XYZ CORPORATIONS (I-X),,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION, MIDDLESEX COUNTY

DOCKET NO. MID-L-7798-00 MT

CIVIL ACTION

TOBACCO LITIGATION  
CASE CODE 241

**CONSENT ORDER FOR PARTIAL  
DISMISSAL**

**THIS MATTER** having come before the Court on the motion by defendants R.J. Reynolds Tobacco Company, Philip Morris Incorporated, Lorillard Tobacco Company, and Brown & Williamson Tobacco Corporation, for an Order pursuant to R. 4:6-2 dismissing those Counts of plaintiffs' Amended Complaint that fail to state a claim for which relief can be granted; and defendants Liggett & Myers, Inc. and Liggett Group Inc. having joined in the motion; and plaintiffs having agreed that their post-July 1, 1969 failure to warn and concealment claims are preempted by

the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1331, et seq. (the "Labeling Act"); and plaintiffs having further agreed that their common law and statutory fraud claims fail to allege the particularity required by R. 4:5-8; and plaintiffs having further agreed that their conspiracy claim fails because it is not based on a cognizable underlying tort; and plaintiffs having further agreed that plaintiff Ken Klein's loss of consortium claim fails to the extent that it is derivative of the aforementioned claims; and plaintiffs having further agreed that all remaining claims should be adjudicated under the New Jersey Product Liability Act, N.J.S.A. § 2A:58C-1, et seq. (the "PLA"); and good cause appearing;

IT IS on this 5th day of <sup>April</sup>~~March~~, 2001:

**ORDERED** that the following claims in the Amended Complaint be and are hereby dismissed with prejudice and without leave to re-plead these claims:

1. Plaintiffs' common law and statutory affirmative fraud and concealment claims in Counts One (Factual Allegations) and Two;
2. Plaintiffs' post-July 1, 1969 failure to warn claim under the PLA in Count Three;
3. Plaintiffs' conspiracy claims; and
4. Plaintiff Ken Klein's loss of consortium claim to the extent that it is derivative of the aforementioned dismissed claims; and it is further

**ORDERED** that the following of plaintiffs' claims in the Amended Complaint are not dismissed:

1. Plaintiffs' design defect claim under the PLA in Count Three;

2. Plaintiffs' pre-July 1, 1969 failure to warn claim under the PLA in Count Three; and

3. Plaintiff Ken Klein's loss of consortium claim, to the extent that it is based on alleged liability and damages arising in connection with claims not dismissed hereunder; and it is further

**ORDERED** that defendants are not precluded or otherwise prejudiced from seeking further dismissal or summary judgment on any claim not dismissed hereunder; and it is further

**ORDERED** that plaintiffs shall file a Second Amended Complaint in accordance with the provisions of this Order within 20 days of the receipt of this Order; and it is further

**ORDERED** that defendants shall answer, move or otherwise respond to the Second Amended Complaint in accordance with the time limits set forth in the New Jersey Court Rules; and it is further

**ORDERED** that a copy of this Order shall be served on all parties within 7 days of receipt.



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HON. MARINA CORODEMUS, J.S.C.

The undersigned hereby consent to the form and content of the within Order:

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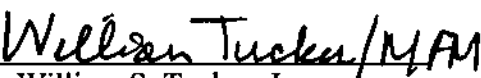
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March 14, 2001

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